



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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REGIONAL ADMINISTRATOR

July 30, 2009

Colonel Anthony O. Wright
District Engineer
U.S. Army Corps of Engineers
Attn: Joseph Brock
PO Box 3755
Seattle, Washington 98124-3755

RE: Reference No: NWS-2008-549
Applicant: Port of Chehalis

Dear Colonel Wright:

This letter is in reference to the proposed application by the Port of Chehalis for a Regional General Permit, which was placed on Public Notice Public Notice NWS-2008-549 by the U.S. Army Corps of Engineers, Seattle District (Corps) on May 6, 2009. The proposed Regional General Permit (RGP) would authorize the discharge of up to 40 acres of fill material into Category IV wetlands adjacent to Berwick and Dillenaugh Creeks for the construction or expansion of industrial facilities and support features that are necessary for the use and maintenance of the facilities. The facilities to be constructed are not specifically identified. The area identified for use of the permit is also known as the Chehalis Industrial Park, which is a small portion of the Port of Chehalis District.

On July 6, 2009, the United States Environmental Protection Agency, Region 10 (EPA) provided detailed comments on the proposed permit. We stated that we did not believe that the permit, as proposed, complies with the Clean Water Act Section 404(b)(1) Guidelines, (Guidelines) and EPA expressed concerns that the permit, as proposed, may have substantial and unacceptable adverse effects on aquatic resources of national importance (ARNI). We believe that the project purpose is too poorly defined to be able to adequately identify and evaluate alternatives which may result in less impact on the aquatic ecosystem. Because the proposed class of activities is not water-dependent, alternatives which do not involve a discharge of fill into waters of the United States are presumed to exist, unless demonstrated otherwise. Without a demonstration that there are no practicable alternatives to the fill with less impact to the aquatic ecosystem, the proposed RGP does not comply with the Guidelines, and the project should not be permitted. Second, the proposed project is for a Regional General Permit. Such permits can be authorized when they will cause only minimal impacts, individually and cumulatively, to the aquatic ecosystem. The proposed RGP would authorize the filling of up to 40 acres of wetlands in a very flood-prone area of the Chehalis River basin. The loss of these wetlands would result not only in a loss of flood storage to the basin, but would also likely result in increased runoff to

the river and greater synchronicity of the increased flood discharges to the river, which would greatly exacerbate flooding locally as well as in areas downstream of the proposed project. EPA does not believe such impacts to be minimal, and so a RGP for the proposed discharge is not the appropriate instrument for the Corps to authorize the applicant's project.

EPA also considers a RGP for the project as proposed, to be an inappropriate mechanism for the applicant's project. Its purpose is not to authorize regional work on a regional basis, but rather to authorize the build-out of a small portion of the Port of Chehalis region; viz., the Chehalis Industrial Park. As we stated in our previous letter, the proposed development of Chehalis Industrial Park is better suited to an individual permit process. However, there may be compelling reasons for the Port of Chehalis to consider a regional approach to meeting its development needs. If that is the case, a RGP might be an appropriate regulatory instrument for such a regional approach. It would require considerable work to demonstrate compliance with the Guidelines. However, if adequate information is developed to clearly identify the amount and type of regional development anticipated, to identify non-wetland parcels which could accommodate this development, and identify appropriate in-watershed mitigation for any wetland fill which cannot be avoided, it is possible that such a RGP could comply with the Guidelines. We identified in our previous letter what we believe to be a viable approach to the development of such a body of information, and would welcome an opportunity to consult on such a process.

Since our letter of July 6, 2009, EPA has seen no new information which would change our opinion that the project, as proposed, could cause substantial and unacceptable adverse effects on the Chehalis River basin, which we believe to be an Aquatic Resource of National Importance. The lower Chehalis River, which is downstream of the project site, provides habitat for multiple populations of anadromous fish (including several different runs of Chehalis Basin fall chinook, spring chinook, coho, chum, and winter steelhead. Populations of coho and sea run cutthroat are also present in both Berwick and Dillenbaugh Creeks that run through the proposed Port properties)^{1 2}. Furthermore, the impacts from flooding and decreased water quality to these populations in the lower Chehalis would also effect populations in the tributaries to the lower Chehalis River. The Chehalis and nearby drainages produce more coho smolts (575,000 in 1999) than any other system along the Washington Coast.³

The impacts which could be anticipated from the development as proposed include the avoidable loss of up to 40 acres of wetlands in the flood-prone areas of the Chehalis River. Area wetlands provide storage for storm and floodwaters; stabilize sediments and stream courses; desynchronize runoff; and aid in the maintenance of water quality through nutrient uptake. These functions assist in sustenance of the ecological community and the human environment. The development of these wetlands, in addition to the resulting direct loss of flood storage and water quality maintenance, would result in an associated impact of increased runoff of storm water of

¹ 2003. Mobrand Biometrics Inc. Assessment of Salmon and Steelhead Performance in the Chehalis River Basin in Relation to Habitat Conditions and Strategic Priorities for Conservation and Recovery Actions. Final Report prepared for Chehalis Basin Fisheries Task Force and Washington Department of Fish and Wildlife.

² Washington Department of Fish and Wildlife Priority Anadromous and Resident Fish Presence Report from Streamnet Database for T13R02W, Section 5.

³ Smith and Wenger, 2001, in *The Chehalis Basin Plan for Recovery*, WA Department of Ecology.

higher temperature and worse water quality than currently exists. Furthermore, the runoff would be dumped into the river rapidly and immediately, which would increase flood volumes and flood peaks. These effects would combine to worsen flooding downstream. Floodwaters are typically of poor water quality and contain higher loads of sediments and toxicants due to the scouring nature of floods. These would cumulatively and synergistically degrade downstream water quality and consequently fish habitat, as well as worsen flooding in an already badly compromised system. The Corps, along with a number of agencies and concerned public groups, has spent large sums of money studying and evaluating ways in which the flood risks and damage to the Chehalis River basin may be ameliorated. The authorization of the RGP, as proposed, in addition to not complying with the Guidelines, is also contrary to the public interest.

EPA concludes, based on the foregoing, that the proposed RGP will have substantial and unacceptable adverse effects on aquatic resources of national importance. We believe that the permit is too narrowly defined to meet the purpose and intent of a Regional General Permit, and that, whether viewed as a RGP or as an individual permit for the Chehalis Industrial Park, the project, as proposed, does not comply with the Guidelines and should be denied. I therefore request, pursuant to Part IV(3)(c) of the Clean Water Act Section 404(q) Memorandum of Agreement (404(q) MOA) between our agencies, signed August 11, 1992, that you provide me with a copy of the draft permit and decision documents if the Corps proposes to issue the permit.

In closing, I would like to add that EPA would welcome the opportunity to work with the Corps and the Port of Chehalis to develop an appropriate RGP using a more comprehensive regional approach, which we identified in our letter of July 6. I would like to express my thanks to the Corps for allowing us additional time to provide that more detailed review, and hope that our comments will be of assistance to the Corps and the applicant. Should you have any questions or require further information on the above, please do not hesitate to contact, or have your staff contact, Dr. Mary Anne Thiesing at (206) 553-6114 or at thiesing.mary@epa.gov.

Sincerely,



Michelle L. Pirzadeh
Acting Regional Administrator

cc: Jim Rothlin, Executive Director, Port of Chehalis
Brian Misseldine, U.S. Fish and Wildlife Service
National Marine Fisheries Service
Chehalis Confederated Tribes
Cowlitz Indian Tribe
Mark Cline, Washington Department of Ecology
Scott Bremmer, Washington Department of Fish and Wildlife
Senator Patty Murray
Senator Maria Cantwell
Representative Brian Baird

